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No. 41

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In the Supreme Court of the United States

OCTOBER TERM, 1965

HENRY BROWN, WILLIE KELLY, L. C. BIBBENS, ROBERT SMITH AND CLEVELAND MCKINZIE,

Petitioners,

v.

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR THE RESPONDENT

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STATEMENT

On Saturday morning, March 7, 1964, Henry Brown, Willie Kelly, L. C. Bibbins, Robert Smith and Cleveland McKinzie walked into the front room of the building in the Town of Clinton (pop. 1568) used to house the Audubon Regional Library. The front room of the building was used at the time as a lobby where requests for library books were taken. Only one employee, Mrs. Katie Reeves, was on duty at the time. As soon as the men entered, Mrs. Reeves asked if she could help them. (T. 95). Henry Brown handed her a slip of paper on which was written the words, "Wandell Arna, the Story of the Negro, Bontems." As he handed Mrs. Reeves the paper, Brown said, "I

would like to get this book." (T. 100). Mrs. Reeves then consulted the library card catalogue and ascertained that the library did not have such a book. Mrs. Reeves then told Brown that the book would be ordered from the State Library and that he would be notified of its arrival. It was later found that no such book existed. At this point, Brown had taken one of the two chairs in the room and the other four men were standing around him. Mrs. Reeves later testified (T. 96) that since she could not supply the book at that time, she assumed that the five men would leave. When they made no move to leave, Mrs. Reeves repeated what she had said about the book. No further requests for library service were made by any of the men, they simply remained where they were without saying anything. Mrs. Reeves then requested the five men to leave. The five men simply stayed as they were. Mrs. Reeves then called the Librarian, Mrs. Perkins, who was in a rear room of the building. Mrs. Perkins came into the room and requested the five men to leave the building. They still made no move to do so. At this time, the Sheriff came into the room and asked the men to leave. When they still failed to do so, the Sheriff arrested them.

A bill of information was filed by the District Attorney on March 11, 1964 charging the five men with violating R.S. 14:103.1, relative to disturbing the peace, in that, with the intent to provoke a breach of the peace and under circumstances such that a breach of the peace might be occasioned thereby, they congregated together in the Audubon Library Build-

ing in the Town of Clinton, Louisiana and did then and there fail and refuse to leave said premises when ordered to do so by Mrs. Marcia Perkins, who was then and there in lawful charge of said premises and did further refuse and fail to leave said premises when ordered to do so by Arch V. Doughty, Sheriff of the Parish of East Feliciana.

On the trial of the case, it was determined that reason for the conduct of the five petitioners which resulted in their arrest, trial and conviction, was a program initiated by an organization known as Congress of Racial Equality to "test" the use of the Library facilities in the Town of Clinton by members of the negro race. All of the petitioners are negroes.

ARGUMENT

May It Please The Court:

The petitioners have endeavored to assert that their constitutional rights have been invaded. Whereas, the State contends that this is merely a prosecution of a misdemeanor involving, purely and simply, a disturbance and breach of the peace, and does not involve a denial of due process or of any rights of the petitioners under the Constitution of the United States. The petitioners have tried to contend that the enforcement of the criminal statute (L.S.A. R.S. 14:103.1) is an effort by the State to further and maintain segregation of the races in Louisiana. Whereas, the State contends that the issue is simply whether any person, or group of persons, have any right to use a facility such as a public library room as a place in which to

loiter or create a nuisance to the extent that the employees of such a facility, or those wishing to make a bona fide use of it, are embarrassed and disturbed.

Upon the trial of the case it was proved that the petitioners were guilty of the misdemeanor as charged. Through competent testimony it was shown that petitioners remained in the library with the specific intent to provoke a breach of the peace, or under circumstances such that a breach of the peace might have been occasioned thereby. Petitioners also failed to *move on* when ordered to do so by a law enforcement officer. (T. 116).

Also, we wish to point out to the Court that (as shown on the trial of this case) the facts and circumstances of this case abundantly show that this statute (L.S.A. R.S. 14:103.1) was administered impartially against the petitioners, and that it was not a means of maintaining segregation. These facts and circumstances are as follows:

1) Petitioners *were served* by the librarian with the same courtesy afforded any other borrower of the library. (T. 108).

2) It was indicated that petitioners had the same privileges as any other resident of the area, such as obtaining books and browsing in the library. (T. 111-112)

3) The evidence indicates that the complete facilities were made available to the petitioners, and only after their use of the library was completed were they asked to leave. No one, whether white or Negro, has the right to use

such facilities as a place in which to loaf or loiter.

Taylor v. Louisiana, 370 US 154, 82 S. Ct. 1188 (1962), strongly relied upon by petitioners, is inapplicable to the instant case. In the Taylor case the defendants were endeavoring to transact lawful business in the bus terminal when they were arrested; but in this case the petitioners had completed their transactions with the librarian and therefore had no reason to loiter about the premises. The petitioners acted in an exceedingly unusual manner for people wanting to be served at the library; their conduct was such as would cause much apprehension to the occupants of the library, that is, Mrs. Reeves and Mrs. Perkins, especially since they refused to leave when asked to do so. (T. 124, 125). Since the petitioners no longer had any lawful reason to remain on the premises they were required to heed the sheriff's order to *move on*. "The question of whether certain conduct constitutes a breach of the peace depends largely upon the facts of each particular case and the circumstances surrounding the incident. An act which would be lawful in some circumstances may amount to a breach of peace if done under other circumstances." (*Abernathy v. Alabama*, 155 So.2d 586). We think that it could not conceivably be said that petitioners did not have knowledge that their conduct was calculated to incite a breach of the peace.

A regulation similar to R.S. 14:103.1 was discussed in *Benson v. City of Norfolk*, 163 VA. 1037, 177 S.E. 222. In that case the defendant's conviction

for failing to "move on" was affirmed. The Court felt that it was vital to the welfare of a community that police officers have reasonable authority and discretion in requiring persons to *move on* if they are loitering or standing on public property. (See also, *Tinsley v. City of Richmond*, 202 Va. 707, 119 S.E. 2d 488).

Likewise, in *Feiner v. New York*, 340 US 315, 71 S. Ct. 303, it was held that a New York statute, similar to that of the Louisiana statute, was constitutional and did not encroach upon any constitutional rights under the Fourteenth Amendment or Bill of Rights of the United States Constitution. The New York statute involved in the Feiner case reads as follows:

> Section 722. Any person who *with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned*, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> (3) *Congregates with others* on a public street *and refuses to move on when ordered by the police.* (Emphasis supplied)

Language used by the New York Courts in interpretating the New York statute is appropriate to the case at bar, thus:

> "They must 'move on' when a police officer so directs for the purpose of avoiding possible disorder that otherwise might ensue. The legislature has provided that failure to obey such directions in itself is disorderly conduct. . ."
>
> (*People v. Galpern*, 259 N.Y. 279, 181 N.E. 572)

> "It is not prerequisite to arrest on a charge of disorderly conduct (disturbing the peace) that a breach of the peace shall have actually occurred." (*People v. Hipple*, 263 NY 242, 244, 188 N.E. 725, 726)
>
> "Defendants' course, (of conduct) therefore, was calculated to occasion a breach of the peace. (*People v. Thorpe*, 198 Misc. 462, 101 NY S (2d) 986, 990).

The evidence presented on the trial of the case at bar indicated that the petitioners, after they had completed their use of the library facilities, lingered in the library for the sole purpose of creating an incident and "disturbing" the two librarians or other persons who might use the library. It was a planned affair with the sheriff being notified that something was going to happen at the library. (T. 117 and 131). Due respect for law and the authority of officers of the law should have motivated the petitioners to obey the request of the officer which was neither arbitrary nor capricious.

> "Whenever one person declares that he or she will be the sole judge of whether or not the law will be respected and obeyed, anarchy has found its roots in a nation dedicated to lawful authority." (*People v. Lo Vecchio*, 185 Misc. 197, 56 NY S (2d) 354)

CONCLUSION

For the foregoing reasons, the conviction of petitioners should be sustained as the proven facts demonstrate beyond a shadow of a doubt that these petitioners were guilty by their failure to obey the

lawful orders of the police under a lawful statute. Petitioners have shown no respect for law and the authority of officers of the law; nor have they shown any interest in the peace and tranquility of their community. In essence, the petitioners declared that they would be the sole judge of whether or not the law would be respected and obeyed.

Respectfully submitted,

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CERTIFICATE

I, the undersigned, hereby certify that I have this day mailed, postage prepaid, copies of the foregoing Brief to Messrs. Carl Rachlin and Collins, Douglas and Elie, attorneys for Petitioners, at their usual business addresses.

Baton Rouge, Louisiana this_____ day of _____, 1965.

Jack P. F. Gremillion

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